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No. 02-1774; 02-1253

In the

Supreme Court of the United States

FRED RIGGS, DONNA SINGER and AL DICKSON,

Petitioners,

v.

SAN JUAN COUNTY, SAN JUAN HEALTH SERVICES DISTRICT, County Commissioner J. TYRON LEWIS, County Commissioner LYN STEVENS (official capacity only), County Commissioner MANUAL MORGAN (official capacity only), RICK BAILEY, County Attorney CRAIG HALLS, BILL REDD, REID WOOD, KAREN ADAMS, ROGER ATCITTY, PATSY SHUMWAY (official capacity only), JOHN LEWIS, LAUREN SCHAFER, TRUCK INSURANCE EXCHANGE AND DENNIS ICKES; and new district officers, NETTIE PRACK (official capacity only), GLEN IMEL (official capacity only), CLEAL BRADFORD (official capacity only), JOHN FELMETH (official capacity only) and as yet unnamed JOHN AND JANE DOES, in their official and individual capacities, jointly and severally,

Respondents.

Petition for a Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

PETITIONERS' SUPPLEMENTAL AUTHORITY BRIEF

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SUPPLEMENTAL AUTHORITIES IN SUPPORT OF THE PETITIONERS PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION AND PETITION FOR REHEARING OF PETITION FOR CERTIORARI

Pursuant to Supreme Court Rule 15- 8, the Petitioners file this brief of supplemental authorities. Petitioners have currently before the Court a Petition for a Writ of Mandamus and Petition for a Writ of Prohibition, docket no. 02-1774 and a Petition for Rehearing for their denied Petition for Certiorari docket no. 02-1253. The supplemental authorities below support the Petitioners' view and Harvard University Professor Joseph William Singer's address in the SUPREME COURT'S ATTACK ON INDIAN SOVEREIGNTY in a symposium on Indian law at New England School of law, October, 2002 to be published in an upcoming New England Law Review article. He notes that "Nevada v. Hicks misstates precedent, ignores current congressional and presidential policy, and violates existing treaties." in excerpts of his address found at http://www.indiancountry.com/article/1055857097. See, *U. S. v. Enas*, 2001 U.S. App. LEXIS 14397, *46; 255 F3d 662 (2001) Unanimous En Banc cert denied, 122 S. Ct. 925 (2002) observing lack of Article III Constitutional analysis of Court's authority to diminish Indian Court authority). The subject matter jurisdictional authority of Indian Nation Courts, Federal Courts, Congress, and Executive to define the scope of Indian Nation Court authority is ripe for review and one of national importance. Petitioners assert that accepting these petitions will preserve all parties and Court's resources.

SUPREME COURT LAW

(A) *Nguyen v. United States*, 539 U.S. ____slip opinion, No. 01-10873, Decd' June 9, 2003* upholding Congress'

Article IV authority to make all needful rules and regulations respecting territories or possessions. [1]

(B) *American Ins. Assoc. v. Garmendi*, 539 U.S. ___, slip opinion, docket no. 02-722, Decided June 23, 2003 upholds Article II Executive authority in foreign affairs. "Generally, then, valid executive agreements are fit to preempt state law, just as treaties are,.... Subject, that is, to the Constitution's guarantees of individual rights. ....Id. page 17 fn. 9. Without Congressional *express divestiture* of Navajo Nation authority over non-Indians by statute or treaty, the Executive action here, a BIA-Navajo judicial program contract and funding agreement, should take precedence over Article III Court authority to diminish Indian Nation Court authority. [2] Here Navajo Court authority is over non-Indians seeking voluntarily to involve themselves in Navajo Court processes, which is an essential Indian internal affair, and the dismissal of Truck and Attorney Ickes should be reversed. 25 U.S.C. § 3651 (5) "tribal justice systems are an essential part of tribal

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[1] Here, the Tenth Circuit remanded this case for analysis under *Montana v. U. S.*, 450 U.S. 545(1981) and progeny, *where Courts diminish* Indian Nation authority. Conflicting, since 1981, *Congress* using plenary power upheld equal Indian Nation authority over all, by the Tribal Justice Support Act, 25 U.S.C. §§1301-1306 [1993] and the 2000 Technical Amendments 25 U.S.C. §§3631-3663, both identifying Tribal Courts as the *'most'* appropriate forums for disputes in Indian Country over *Indian and non-Indian alike.* S. Rep. No. 88 103d Cong, 1st Sess.8 (1993) H.R. Conf. Rep. No. 383, 103d Cong. 1st sess. 13 (1993).

[2] "Those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished." Felix S. Cohen, Handbook of Federal Indian Law 122 (1941);" *MacArthur v. San Juan County*, 2002 U.S. App. LEXIS 20987 *14 appealed decision below

governments and serve as important forums for ensuring the health and safety and the political integrity of tribal governments". If orders are not enforceable, they can not ensure health and safety.

(C) *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. ____slip opinion, docket no. 01-1368, decided May 27, 2003, finding "In enacting the FMLA, Congress relied on two of the powers vested in it by the Constitution: its Article I commerce power and its power under §5 of the Fourteenth Amendment to enforce that Amendment's guarantees." Here, Congress in enacting the Indian Civil Rights Act and Self-Determination Act, Congress was expanding the 14th amendment guarantees to 'any person' within Indian Nation borders, consistent with Congress' Constitutional limitations "that is essentially a direction that all persons similarly situated should be treated alike." **[(D)]** See, *Lawrence v. Texas*, 539 U.S. _____, slip opinion, docket no. 02-102, dec'd **June 26, 2003** pg. (J. O'Connor, pg. 1 concurrence). Here, the Navajo Court by statute is MANDATED to treat all equally, by statute and contract, and yet, case law since 1978's *Oliphant v. Squamish Indian Tribe*, 1978 U.S. LEXIS 66, *26, 435 U.S. 191, will presume against equality under Indian law. There is no way the Navajo Court can be correct, by statute ***or*** by Court ruling, ***unless*** *this Court does a Constitutional analysis of its and Congress' and Executives' authority over Indian Treaty Nation jurisdictional authority.* . a daunting, insurmountable National conflict!

The Circuit Courts Have Split

8th Cir. *U. S. v. Lara* 2003 U.S. App. LEXIS 5685,*;324 F.3d 635 March 24, 2003 and **7th Cir.** *U. S. v. Long*, 2003 U.S. App. LEXIS 5492,*;324 F.3d 475 **split directly on the same questions asked by these petitioners**.... what is the root authority of Indian Nation Courts,

inherent sovereignty or Congressional delegation, and thus, the subject matter jurisdictional authority of Article I Congress, Article II Executive, and Article III Courts to define Indian Nation Jurisdictional authority, that this Court has found in *Oliphant* and *Nevada v. Hicks*, *supra*, extends to the criminal and civil context alike. *This 10th cir. case should be taken with these 7th and 8th circuit cases to prevent years of wasted judicial resources, appeals and de facto Congressional Indian Law nullification. Lara* is U. S. Supreme Court docket no. 02-1059 and *Long* is docket no. 02-1646. *Lara*'s petition is due July 22, 2003 and the Department of Justice is anticipated to support the position of the Petitioners that Congress defines Indian Court authority. **10th Cir.** *Seneca-Cayuga Tribe of Oklahoma et al v. National Indian Gaming Commission et al* 2003 U.S. App. LEXIS 7284,*;327 F.3d 1019, 10th Cir., April 17, 2003.[3] Upholds several Petitioner arguments. **10th Cir.** *Kennedy v. Hughes*, 60 Fed. Appx. 734; 2003 U.S. App. LEXIS 5475 *12, (unpublished) decided March 20, 2003 upholds Indian Nation forums as exclusive Courts for vindication of Indian Civil Rights Act violations found here. **8th Cir.** – *Penn v. U.S.*, 2003 U.S. App. LEXIS 6357,*9-10;324 F.3d 992, April 3, 2003, upholds Indian Court authority over nonmembers and facially valid order to give Indian Court judge immunity. **4th Cir.** – *Int'l Bancorp, LLC et al v. Societe Des Bains de Mer Et Du Cercle Des Etrangers a Monaco* 2003 U.S. App. LEXIS 9566,*10;329 F.3d 359; decided May 19,

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[3] defines 'Indian Country' the same way as the Navajo Nation and 18 U.S.C. §1151 [at fn.1]; as long as there is "legally cognizable interest in the outcome" the case is not moot [*22] noting actions of a party to try to make it moot sealing the orders from post trial review [*25]; upholds Congressional intent of its statutes [*39]; *Cheveron* deference should be given the Executive's carrying out a statutory scheme [*48-49][here a BIA-judicial program funding agreement demanding uniform and fair use of Navajo law].

2003 upholds the full broad scope of Article I §8 cl. 3 (the Congress shall have Power . . . to regulate Commerce with ..... Indian Tribes") still undiminished here.

28 U.S.C. 1738 Full Faith and Credit will Eliminate the Following Conflicts Between the Court and Congress and Executive Policies

This Court can *support* Tribal Authority over all equally; *support* Treaty Inherent Sovereignty not expressly divested by Congress; *support* congressionally -, BIA-Approved Indian Court orders; *support* Indian Civil Rights Act protections; *support* Indian Nation political integrity and safety; OR- eliminate all the above, dismiss non-Indian parties, and ignore Off reservation facially valid orders.

Full faith and credit for Indian rulings resolves all these conflicts. It is easy to see that unless these petitions are taken, no matter how the Federal court rules, it will be appealed, and resources of the Courts and the parties will be wasted for a question that is ripe now.

CONCLUSION

Based upon the foregoing supplemental authorities, the Petitions, docket no. 02-1253 and 02-1774 should be accepted by the Court and briefed by the parties.

Respectfully submitted,

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